Supreme Court, U.S.
FILED

107

No. 10 08-498 AUG 7 - 2008

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In The

Supreme Court of the United States

CURTIS M. DALTON,

Petitioner,

v.

JERRY TILLER, *et al.*,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Virginia At Richmond

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE COURT SHOULD GRANT CERTIORARI TO SETTLE AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW THAT HAS BEEN DECIDED BY THE SUPREME COURT OF VIRGINIA AT RICHMOND, BY DISMISSING THE CASE BROUGHT BEFORE IT, DUE TO IMPROPRIETIES OF THE 29TH CIRCUIT COURT OF VIRGINIA AS TO WHETHER OR NOT THE ESTATE OF WALTER GAINES OXENDINE WAS PROPERLY SOLD BY LAWS OF VIRGINIA.

LIST OF PARTIES

Petitioners in the lower court include: Curtis M. Dalton, Gary Dalton and Glenda White

Respondents include Jerry Tiller, Linda Tiller, Grace Oxendine and James Oxendine.

TABLE OF CONTENTS

	Page
Question Presented	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	iv
Prayer	1
Opinions Below	1
Jurisdiction	1
Constitutional Provisions Involved	2
Statement of the Case	2
Statement of the Facts	3
Reasons for Granting the Writ	4
The Court should grant certiorari to settle an important question of Constitutional Right violations namely the Fourteenth Amendment Section 1. That the Petitioner is not an attorney and could better explain our cause before the Court, as to the events leading up to this action.	
Conclusion	5
Appendix A: Opinion of the Supreme Court of Virginia, Record Number 080343	App. 1
Appendix B: Order of the Circuit Court for Russell County	App. 2
Appendix C: Copy of will in question	App. 3

TABLE OF AUTHORITIES

Page

Brewis v. Lawson, 76 Va. 36 (1881) 4

Broaddus v. Broaddus, 144 Va. 727, 130 S.E. 794 (1925) 4

Pierce v. Graham, 85 Va. 227, 7 S.E. 189 (1888) 4

Trent v. Collins, 13th Cir. CH01Q017866, 58 Va. Cir. 83 (2001) 4

PRAYER

The Petitioner Curtis M. Dalton respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Supreme Court of Virginia at Richmond issued Wednesday the 12th day of March, 2008.

OPINIONS BELOW

On March 12th, 2008, the Supreme Court of Virginia at Richmond entered its opinion dismissing Petitioner's appeal, due to the improprieties of the 29th Circuit Court of Virginia. Curtis M. Dalton, et al., against Jerry Tiller, et al., Record No. 080343 Circuit Court No. 6109. A copy of that opinion is attached as Appendix A.

On August 3, 2007, the Circuit Court for Russell County, Virginia, denied Petitioner's Motion to Transfer. A copy of that order is attached as Appendix B.

BASIS OF FEDERAL JURISDICTION

This Petition is brought by Petitioner Curtis M. Dalton alleging a violation of Title 28 United States Code § 1331 brought pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution Provides, in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Curtis M. Dalton did with legal representation file on September 12th, 2005 in the 29th Judicial Circuit Court of Virginia, an Exception to Inventory which was heard on February 9th, 2006 without benefit of a Court Reporter. The Petitioner only received that court date after filing a complaint with the Commonwealth of Virginia Judicial Inquiry and Review Commission.

Respondents Jerry Tiller, Linda Tiller, Grace Oxendine and James Oxendine filed a Motion to Dismiss Exceptions to Inventory and Objections to Inventory which was filed on September 9th, 2005,

and Motion to Compel Amended Inventory Accounting and Recision of Deed which was filed on January 10th, 2006.

Petitioner filed a Motion to Transfer this case to United States District Court for the District of New Jersey. Thinking he would have better access to the Court System, this was filed on April 30th, 2007. Motion was denied. Petitioner requested a reason as to why this motion was denied, on three different occasions. To date the Petitioner has not received that explanation.

Petitioner has in good faith tried to get legal representation in Richmond and the local jurisdiction, but to no avail. Although Petitioner did retain two Attorneys in the local jurisdiction they took my retainer fee and then found a reason to withdraw from the case.

STATEMENT OF THE FACTS

As of January 16th, 2008 Petitioner has not received the final order regarding the letter dated November 2nd, 2007. January 16th, 2008 Petitioner Curtis M. Dalton contacted the 29th Circuit Court of Virginia by telephone at 10:12 a.m. requesting a copy of that final order. Petitioner was informed by the court clerk that the Honorable Judge Michael Moore had the order. However at 3:12 p.m. Petitioner Curtis M. Dalton by telephone was inform that no order was

needed for this type of case. To this date Petitioner does not understand this ruling.

There was a conflict of interest, presented by the fact that Jerry Tiller was the Commissioner of Accounts when this property was sold. After the Exceptions and Objections to Inventory was filed on September 9th, 2005, Jerry Tiller then installed Dennis Jones as Assistant Commissioner of Accounts.

REASONS FOR GRANTING THE WRIT

As to the question presented, the Court should grant certiorari to settle an important question of Constitutional Rights Violations, namely the Fourteenth Amendment to the Constitution of the United States. That the Petitioner has not had access to the Court System in the State of Virginia since the unceremonious withdrawal of the two attorneys that Petitioner retained at the onset of this case. Petitioner is of the opinion that this case should have been settled in the State Court system and not have to come this far.

Petitioner has relied on the following cases in making his argument: *Brewis v. Lawson*, 76 Va. 36 (1881); *Pierce v. Graham*, 85 Va. 227, 7 S.E. 189 (1888); *Broaddus v. Broaddus*, 144 Va. 727, 130 S.E. 794 (1925); and *Trent v. Collins*, 13th Cir. CH01Q017866, 58 Va. Cir. 83 (2001).

CONCLUSION

For these reasons, the Petitioner Curtis M. Dalton, respectfully prays that this Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 12th *day of* March, 2008.

Curtis M. Dalton, et al., Appellants,

against Record No. 080343
Circuit Court No. 6109

Jerry Tiller, et al., Appellees.

From the Circuit Court of Russell County

Upon consideration of the petition for appeal and the record in this case, the Court finds that the order entered by the trial court dated August 3, 2007 is not a final, appealable order. In addition, the record contains no order entered after that date.

Accordingly, the petition for appeal, filed February 1, 2008, has not been filed within 3 months of the entry of an appealable order; Rule 5:17(a)(1). For that reason, the appeal is dismissed.

A Copy,

Teste:

/s/ [Illegible]

Clerk

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT FOR RUSSELL COUNTY

IN RE: Estate of
WALTER GAINES OXENDINE,
Decedent

Chancery No.
(Probate) 6109

ORDER

This 29th day of June 2007 came Curtis Dalton, Gary Dalton, and Glenda White, beneficiaries under the will of Walter Gaines Oxendine, deceased, upon a Motion to Transfer the Probate of the Walter Gaines Oxendine estate to the Federal District Court in New Jersey.

It appearing to the court that proper venue and jurisdiction for probate of the estate exists in Russell County, Virginia, and that the Motion to Transfer should be denied, it is therefore

ADJUDGED, ORDERED and DECREED that the petitioner's Motion to Transfer is hereby DENIED. Endorsements of this order are hereby dispensed with. The Clerk shall mail a copy of this order to the petitioners, and to Dennis E. Jones, Assistant Commissioner of Accounts.

Entered this 3rd day of August 2007.

/s/ Michael L. Moore
Michael L. Moore, Judge

APPENDIX C

Last Will and Testament

OF

WALTER GAINES OXEDINE

I, **WALTER GAINES OXEDINE**, a resident of Castlewood, Russell County, Virginia, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all wills and codicils to wills previously made by me.

FIRST: I direct that all of my just debts, the expenses of my last illness and funeral, and the costs of administration of my estate be paid as a cost of the administration of my estate and that the same not be apportioned among the beneficiaries of my estate.

SECOND: I give, devise and bequeath unto my sister, **GRACE OXEDINE**, all my cattle which I may possess at my death.

THIRD: I give, devise and bequeath unto my sister, **GRACE OXEDINE**, all my personal property of every description which is located in my home at the time of my death.

FOURTH: I give devise and bequeath unto my sister, **GRACE OXEDINE**, my home together with 25 acres surrounding my house. I further give, devise and bequeath the barn and all other buildings located thereon.

FIFTH: I give, devise and bequeath unto **JOHN YATES**, ONE HUNDRED AND NO/100 DOLLARS ($100.00).

SIXTH: I give, devise and bequeath the remainder of my property, both real and personal, wheresoever located as follows: one share to my sister, **ELIZA FULLEN**, [deceased] one share to my sister, **NANNIE RYANS**, one share to my sister, **PAULINE FLACK**, [no children no heirs deceased] one share to my sister, **UNA MAE HICKS**, [deceased] one share to my sister, **FRANCES JOHNSON**, on [sic] share to my brother, **JAMES OXEDINE**, one share to my deceased sister, Juanita Walker's, children:

A. **DEBORAH DANDRIDGE**, my neice

B. **RINDA WHEAT**, my neice

C. **ROBERT WALKER**, my nephew

D. **MELVIN WALKER**, my nephew

and one share to my deceased sister, Dorothy Dalton's children:

A. **CURTIS DALTON**, my nephew

B. **GLENDA WHITE**, my neice

C. **GARY DALTON**, my nephew.

SEVENTH: I nominate and appoint my brother, **JAMES OXEDINE** and my sister, **GRACE OXEDINE**, as Co-Executors of my estate, and I direct that no security be required of them on their

bond as Co-Executors or on any successor Executor/ Executrix. In addition to the powers granted by law, I grant my Co-Executors or any successor Executor/ Executrix the powers set forth in Section 64.1-57 of the *Code of Virginia*, and I incorporate that code section in my Will by this reference, as if fully set out herein.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testament, consisting of 4 typewritten pages on all pages of which I have placed my ~~signature and initials~~ [mark] for security and identification this the 21st day of September, 1994.

/s/ X _____ (SEAL)
WALTER GAINES OXEDINE

We, the undersigned, do hereby certify that **WALTER GAINES OXEDINE** has signed, sealed, acknowledged and declared the foregoing paper as and for his Last Will and Testament in the presence of us, two competent witnesses, who, in his presence, at his request and in the presence of each other, all present at the same time, have hereunto subscribed our names as attesting witnesses, this the 21st day of September, 1994.

/s/ [Illegible] ADDRESS /s/ Lebanon VA

/s/ Karen Rose ADDRESS /s/ [Illegible] VA

STATE OF VIRGINIA

COUNTY OF RUSSELL, to-wit:

Before me, the undersigned authority, on this day personally appeared [Illegible] and Karen E. Rose, known to me to be the witnesses, and **WALTER GAINES OXEDINE**, known to me to be the testator, whose names are signed to the foregoing instrument, and all of these persons being by me first duly sworn, **WALTER GAINES OXEDINE**, the testator, declared to me and to the witnesses, in my presence, that said instrument is his Last Will and Testament and that he had willingly ~~signed~~ [made his mark] and executed it in the presence of said witnesses as his free and voluntary act for the purposes thereon expressed; and that said witnesses stated before me that the foregoing Will was executed and acknowledged by the testator as his Last Will and Testament in the presence of said witnesses, who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the said testator, at the time of the execution of said Will, was over the age of eighteen years and of sound mind and disposing memory.

/s/ X (SEAL)
WALTER GAINES OXEDINE

/s/ [Illegible] (SEAL)
WITNESS

/s/ Karen E. Rose (SEAL)
WITNESS

Subscribed, sworn and acknowledged before me by WALTER GAINES OXEDINE, the testator, and subscribed and sworn before me by [Illegible] and Karen E. Rose the witnesses, this the 21st day of September, 1993[4].

My Commission Expires: December 31, 1996.

/s/ [Illegible]
NOTARY PUBLIC

NOTICE: If personal representatives qualified on this estate, they are required by law to file an inventory with the commissioner of accounts within four months after they qualify in the clerk's office to file an account within sixteen months of their qualification, and to file additional accounts within sixteen months from the date of their last account period until the estate is settled. If you make written request therefor to the personal representatives, they must mail copies of these documents (not including any supporting vouchers, but including a copy of the decedent's will) to you at the same time the inventory or account is filed with the commissioner of accounts unless (i) you would take only as an [illegible] at law in a case where all of the decedent's probate estate is disposed of by will, or (ii) your gift has be[illegible] satisfied in full before the time of such filing. Your written request may be made at any time; it may relate to one specific filing or to all filings to be made by the personal representative, but it will not be

effective for filings made prior to its receipt by a personal representative. A copy of your request may [illegible] sent to the commissioner of accounts with whom the filings will be made. After the commissioner of accounts has completed work on an account filed by a personal representative, the commissioner files [illegible] and a report thereon in the clerk's office of the court wherein the personal representative qualified. If you make written request therefor to the commissioner before this filing, the commissioner must mail a copy of this report and any attachments (excluding the account) to you on or before the date that they are filed in the clerk's office.

The name and mailing address of the appropriate Commissioner of Accounts is:

Jerry R. Tiller
P.O. Box 466
Lebanon, VA 24266
Phone: (276) 889-1833

119

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No. 08-498

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JERRY TILLER, *et al.*,

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On Petition For Writ Of Certiorari To The Supreme Court Of Virginia At Richmond

PETITION FOR REHEARING

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This is a good faith and not for delay, request for a rehearing, on petition Number 08-498. Without a rehearing the petitioner will lose property will to him by his deceased Uncle Walter Gaines Oxendine.

Petitioner has included in this request the ruling of the Honorable Judge Randall G. Johnson, for the Circuit Court of the City of Richmond.

Respectfully submitted,

CURTIS M. DALTON

February 6, 2009

Estate of Trent, 13 Cir. CH01Q0178600,
58 Va. Cir. 83 (2001)

VIRGINIA: IN THE CIRCUIT COURT
OF THE CITY OF RICHMOND

ESTATE OF CAROLYN CARLOTTA TRENT, DECEASED

CH01Q01786-00
Decided: November 27, 2001

COUNSEL

Greer P. Jackson, Jr., Esquire
Spinella, Owings & Shaia, P.C.
8550 Mayland Drive
Richmond, VA 23294-4704

LETTER OPINION BY JUDGE RANDALL G. JOHNSON:

This matter is before the court on the petition of Larry B. Collins, Administrator c.t.a. of the Estate of Carolyn Carlotta Trent, deceased, for a grant of the powers set out in Va. Code § 64.1-57, particularly the power to sell the real estate located at 1909 North 24th Street in Richmond. For the reasons that follow, the petition is denied.

Carolyn Trent died on August 26, 1999. On August 7, 2001, her will was probated in the clerk's office of this court. After directing her executor to pay all of her just debts, funeral expenses, and estate and inheritance taxes, the will devised all of Trent's estate, "wheresoever situated and howsoever held, real, personal or mixed," to fourteen named nieces

and nephews in equal shares. Among the property owned by Trent at her death is the property located at 1909 North 24th Street. Claiming that the estate's personal property is not sufficient to pay the debts of the estate, petitioner seeks to sell the realty.

Virginia Code § 64.1-57.1 provides, in pertinent part:

> Upon motion of a personal representative of trustee, a circuit court may grant to the sole personal representative or trustee, if there is only one, or to all the personal representatives or trustees, if there is more than one, all or a part of such powers as maybe incorporated [into a will] by a reference pursuant to § 64.1-57.

One of the powers that may be incorporated into a will by reference pursuant to § 64.1-57 is the power:

> To sell, assign, exchange, transfer and convey or otherwise dispose of, any or all of the investments and property, either real, personal or mixed, *which may be included in, or may at any time become part of* the trust or estate upon such terms and conditions as the fiduciary, in his absolute discretion, may deem advisable. . . .

Virginia Code § 64.1-57.1(1)(b) (emphasis added).

The court holds that since the real property at issue in this case was not included in, and never became a part of Trent's estate, the court cannot give petitioner the power to sell it.

In the absence of testamentary language to the contrary, title to real property vests in the devisee or heir immediately upon the death of the decedent. *Broaddus v. Broaddus*, 144 Va. 727, 741-42, 130 S.E. 794 (1925). Title to personal property vests in the personal representative to be distributed or, if necessary, to pay off debt. *Id.* at 742. *See also* 15 Wm. & Mary L. Rev. 949 (1973-74). In other words, while personal property is part of a decedent's estate by operation of law, real property is part of a decedent's estate only if the decedent makes it part of the estate by will. Ms. Trent did not do so.

Trent's will does direct the executor to pay her debts. Petitioner has cited no case, however, that holds that such a provision makes the testator's real property part of the estate in the absence of an express or implied power to the executor to sell such real property. The court also has found none. In fact, the holding in *Broaddus* is a clear indication that such is not the law. In *Broaddus*, the will also provided for the payment of the testator's debts. 144 Va. at 733. The Supreme Court nonetheless held that the testator's real property was not part of his estate.

The court also rejects petitioner's argument that Va. Code § 64.1-181 allows the relief he seeks. That section provides:

> All real estate of any person who may hereafter die, as to which he may die intestate, or which, though he die testate, shall not by his will be charged with or devised subject to the payment of his debts, or which

> may remain after satisfying the debts with which it may be so charged or subject to which it may be so devised, shall be assets for the payment of the decedent's debts and all lawful demands against his estate, in the order in which the personal estate of a decedent is directed to be applied.

The above section in substantially the same form as it is now, has been the law in Virginia for over 150 years. While that section has consistently been held as allowing a creditor to maintain suit against a devisee or heir to subject a decedent's real property to the decedent's debts, it has never been interpreted as making the decedent's real property part of the estate. *See, e.g., Broaddus v. Broaddus, supra,* 144 Va. at 742-43; *Pierce v. Graham*, 85 Va. 227, 234-236, 7 S.E. 189 (1888); *Brewis v. Lawson*, 76 Va. 36, 40-41 (1881). To the contrary, prior to the adoption of Va. Code § 64.1-185, which gives personal representatives authority to sue devisees and heirs to subject real property to estate debts, the cases specifically held that since real property is *not* part of a decedent's estate, lack of privity not only prevented creditors from maintaining such suits against personal representatives; lack of privity also prevented personal representatives from maintaining such suits against devisees and heirs. *Id.* While § 64.1-185 now allows personal representatives to maintain such suits against devisees and heirs, there is still no law making real property part of a decedent's estate. This court cannot create one.

Finally, petitioner argues that the General Assembly must have intended that real property be part of decedents' estates because § 64.1-57.1 was amended to include administrators in the term "personal representatives" after an Attorney General opinion was issued saying that they were not included. *See* Opinion to The Honorable Gerald A. Gibson, Clerk, Circuit Court of the City of Danville, April 18, 1984, 1983-84 Va. Rep. Atty. Gen. 159, 83-84 Va. AG 159A. Why, asks petitioner, would the legislature include administrators in the statute unless they could be given power with respect to real property? The answer is easy. Section 64.1-57 contains many powers. The powers relating to real property are only a few of them. There is nothing to prevent a court from granting other powers set out in that section to an administrator. The court holds only that the power to sell real property that is not part of the decedent's estate is not one of them. Moreover, as the Supreme Court made clear in *Moore v. Gillis*, 239 Va. 239, 389 S.E.2d 453 (1990):

> If statutory language "is clear and unambiguous, there is no need for construction by the court: the plain meaning and intent of the enactment will be given it." *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985). "When an enactment is clear and unequivocal, general rules of construction of statutes of doubtful meaning do not apply." *Id.*

239 Va. at 241.

Virginia Code § 64.1-57(1)(b) is clear and unambiguous. It allows a court to grant a personal representative the power to sell real property "which may be included in, or may at any time become part of the estate. Since the real property belonging to Carolyn Trent has never become part of her estate, the court cannot grant petitioner the power he seeks.

A copy of an order is enclosed.